

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

STATE OF ALABAMA,
by and through the
ALABAMA HISTORICAL COMMISSION,

Plaintiff,

v.

THE UNIDENTIFIED SHIPWRECKED
VESSEL believed to be Schooner CLOTILDA,
its Apparel, Tackle, Appurtenances and Cargo,

In Rem,
Defendant.

VERIFIED COMPLAINT

COMES NOW the State of Alabama, by and through the Alabama Historical Commission, and brings suit *in rem* against the Defendant Shipwrecked Vessel believed to be the Schooner CLOTILDA, *in rem*, its apparel, tackle, appurtenances and cargo, located within the territorial waters and/or embedded in the submerged lands under the territorial waters of the State of Alabama.

Introduction / Background Information

The Schooner CLOTILDA was the last slave ship to arrive in the United States, sailing into the Port of Mobile in July of 1860 carrying its illicit human cargo of 109 enslaved persons. Importation of enslaved persons to the United States was illegal, having been outlawed over fifty (50) years prior. To hide the evidence of their crime, the Owner and Captain of the CLOTILDA arranged to have the vessel towed by steam tug up the Spanish River, following the waterway to the junction of the Mobile River. At that point – at or near Twelve Mile Island – the captives

were transferred to other vessels, and the CLOTILDA was burned and scuttled.¹ Extensive exploration and scientific study has confirmed the CLOTILDA has been found some 159 years after its last voyage. The State of Alabama, by and through the Alabama Historical Commission, seeks to fully adjudicate and conclusively establish its ownership of the vessel (Shipwrecked Schooner CLOTILDA), as well as all rights attendant thereto.

Jurisdiction

1. This is a case of admiralty and maritime jurisdiction stating a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, as hereinafter more fully appears. This Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1333.

Venue

2. Venue is appropriate in the Southern District of Alabama, Southern Division, inasmuch as the property that is the subject of the action is situated herein. 28 U.S.C. § 1391(b)(2).

Parties

3. Plaintiff Alabama Historical Commission is an agency of the State of Alabama charged with preservation of historic sites, buildings and objects within the state. *See* Ala.Code. §§ 41-9-240, *et seq.* This charge also includes abandoned shipwrecks, or the remains of those ships, and all underwater archeological artifacts contained in or on submerged lands belonging to

¹ *See generally*, “Archeological Investigations of 1bBa704, A Nineteenth Century Shipwreck Site in the Mobile River Baldwin and Mobile Counties, Alabama // Final Report,” prepared by SEARCH, Inc. (May 2019). Report posted on the Alabama Historical Commission’s website:

https://ahc.alabama.gov/press/FINAL_1Ba704%20Report_SEARCH_redacted.pdf

the State of Alabama. *See* Ala.Code. §§ 41-9-290, *et seq.* (“Alabama Underwater Cultural Resources Act”).

4. The *in rem* Defendant Shipwrecked Schooner CLOTILDA is located within the territorial waters and/or embedded in the submerged lands under the territorial waters of the State of Alabama.

5. The Alabama Historical Commission, acting in concert with National Geographic Society and other partners, has undertaken efforts to explore, document and protect the Shipwrecked Schooner CLOTILDA. These efforts have been, and will continue to be, conducted in accordance with all appropriate maritime archeological protocols, carried out by licensed contractors specializing in such endeavors.

6. Upon the filing of this action, an artifact or artifacts will be turned over to the United States Marshall for the Southern District of Alabama for symbolic attachment and arrest *in rem*.

7. These artifacts, as well as any other artifacts recovered pursuant to the operations conducted under the jurisdiction of this Court, will be in the actual and/or constructive possession of this Court and/or its duly appointed Substitute Custodian during the pendency of this action.

8. This Court has, or will have during the pendency of this action, jurisdiction *in personam* over any potential claimant, individual or entity seeking to assert claims of ownership or rights attendant thereto, as well as any other claims arising from the discovery and future activities involving the CLOTILDA. *In personam* jurisdiction over such individuals or entities

will arise by virtue of their contacts with this forum, the nature of the Plaintiff's action, the relationship of potential claimants to the *res*, this forum and/or the causes of action being asserted herein by Plaintiff.

9. The Court's exercise of jurisdiction over competing claimants and/or other interested parties (if any) is necessary to prevent irreparable injury to, or destruction of, the Shipwrecked Schooner CLOTILDA; to allow Plaintiff to continue ongoing efforts to preserve, document and protect this significant historical vessel; to bring recovered artifacts within this District if possible to do so; and to prevent destruction of this Court's actual and potential jurisdiction.

Count One: Statutory Ownership Claim

10. Plaintiff incorporates herein by reference its allegations contained in the foregoing paragraphs 1 through 9, as if fully set forth herein.

11. Pursuant to the Abandoned Shipwreck Act, 43 U.S.C. §§ 2101, *et seq.*, the United States has title to any abandoned shipwreck that is (1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on submerged lands of a State; or (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register. 43 U.S.C. § 2105(a)(1)-(3).

12. The title held by the United States to any abandoned shipwreck under 43 U.S.C. § 2105(a) is transferred to the State in or on whose submerged lands the *res* is located. *Id.*, at § 2105(c).

13. The term “embedded” is defined in the referenced statute to mean, “[f]irmly affixed in the submerged lands... such that the use of tools of excavation is [sic] required in order to move the bottom sediments to gain access to the shipwreck, its cargo and any part thereof[.]” *Id.*, at § 2102(a).

14. The term “submerged lands” is defined by statute to mean “lands beneath navigable waters,” as set out in 43 U.S.C. § 1301; specifically, “[A]ll lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction[.]” 43 U.S.C. § 1301(a)(1).²

15. The Shipwrecked Schooner CLOTILDA is situated under the territorial waters of the Mobile River, at or near Twelve Mile Island along the east bank/eastern channel of the waterway. Archeological efforts have identified the vessel on the riverbed, with its bow projecting above the sediment and the aft end of the ship buried and obscured. The archeological survey confirms that the shipwreck is embedded in the bottom lands of the navigable waterway such that the structure is firmly affixed, requiring use of excavation tools to gain further access to the wreck. *See generally*, “Final Report” of SEARCH, Inc. (listed in Note 1, *supra*).

16. Pursuant to the Abandoned Shipwreck Act, specifically 43 U.S.C. § 2105(c), title to the Shipwrecked Schooner CLOTILDA has been transferred from the United States to the State of Alabama.

² Plaintiff will demonstrate through testimony and documentary evidence, the historical status of the subject waterway.

17. The Alabama Historical Commission is charged with the statutory obligation to develop and implement a management plan for underwater cultural resources. *See* Ala.Code. § 41-9-294. This includes permitting exploration and excavation (as appropriate) of underwater cultural resources, such as the Shipwrecked Schooner CLOTILDA.

18. In order that it may fully carry out its obligation to preserve, document and protect the Shipwrecked Schooner CLOTILDA, the Alabama Historical Commission seeks ruling(s) from this Court to, *inter alia*: (1) Conclusively establish the State of Alabama's ownership over the Shipwrecked Schooner CLOTILDA; (2) to establish all rights attendant to the ownership thereof; and (3) obtain further, different and necessary orders from the Court to preserve, document and protect the historically significant vessel.

Count Two: Rights Attendant to Ownership and Injunctive Claim

19. Plaintiff incorporates herein by reference its allegations contained in the foregoing paragraphs 1 through 19, as if fully set forth herein.

20. The rights and efforts of Plaintiff, the integrity and preservation of the Shipwrecked Schooner CLOTILDA, as well as further efforts to explore, document, protect and possibly recover the vessel or any the artifacts therefrom, mandate that Plaintiff be protected by this Court in maintaining exclusive dominion and control of further activities involving the Defendant Shipwrecked Schooner CLOTILDA without interference by third parties.

21. Interference with ongoing operations and/or future endeavors would substantially and irreparably harm efforts to document, protect and preserve the Shipwrecked Schooner

CLOTILDA, and would be harmful to the public's interest in this historically significant vessel, as well as create significant hazards to the safe and successful operations at the shipwreck site.

22. In order to adequately protect the security and archeological integrity of the Shipwrecked Schooner CLOTILDA, this Court should enter a preliminary injunction prohibiting any claimant and/or interested parties from interfering with present, future and/or planned operations at the site and/or undertaking other acts and/or omissions which would otherwise interfere or impair the State's statutory duty to protect, document and preserve the Shipwrecked Schooner CLOTILDA.³

Relief Requested

WHEREFORE, Plaintiff prays for the following relief:

A. That the State of Alabama, by and through the Alabama Historical Commission, be declared the true, sole and exclusive owner of the Defendant Shipwrecked Schooner CLOTILDA, as well as any component parts thereof or items salvaged from the vessel; and

B. That the State of Alabama, by and through the Alabama Historical Commission, be declared to have the sole and exclusive right to continue operations to document, protect and preserve the Defendant Shipwrecked Schooner CLOTILDA, as well as any component parts thereof or items salvaged from the vessel, without any interference by third parties, and that any and all such interference be temporarily and permanently enjoined; and

C. That process *in rem* and/or *quasi in rem*, pursuant to Supplemental Rule C(3)(a), along with a Warrant of Arrest be issued in due form of law, in accordance with the practice of

³ Separate motion(s) will be filed requesting necessary relief.

this Honorable Court, against the aforesaid shipwreck with proper notice by publication directing that:

- (i) All persons claiming an interest in this action and the Shipwrecked Schooner CLOTILDA, causing them to appear and answer this Complaint;
- (ii) Show cause as to why artifacts taken from the Shipwrecked Schooner CLOTILDA by third parties should not be returned to the State of Alabama, inasmuch as the State has full ownership, title and right to possession thereof;
- (iii) Assert herein any claim, right or putative interest in the vessel, the rights attendant to ownership thereof, or be forever barred from making such claim and/or statement of interest; and

D. That the State of Alabama, by and through the Alabama Historical Commission, or its designee, by appointed Substitute Custodian for the Shipwrecked Schooner CLOTILDA; and

E. That Plaintiff may have such other, further and different relief as justice may so require.

Done this 26th day of July, 2019.

Respectfully submitted,

/s/ John P. Kavanagh, Jr.
John P. Kavanagh, Jr. (KAVAJ1011)
Forrest S. Latta (LATTF0526)

Attorneys for
State Of Alabama
by and through the
Alabama Historical Commission

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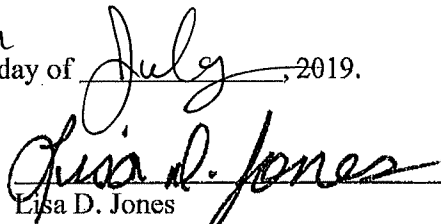
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VERIFICATION

COMES NOW Lisa D. Jones, who first being duly sworn, does depose and say as follows:

1. I am a resident of the state of Alabama, over 18 years old and fully competent to make this Verification.
2. I am the Executive Director of the Alabama Historical Commission, and make this Verification based on my personal knowledge.
3. I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.
4. My personal knowledge is based on statements, documents and information in possession of the Alabama Historical Commission, or furnished to me by employees or agents of said agency, and I make this Verification as the duly authorized agent of the Alabama Historical Commission

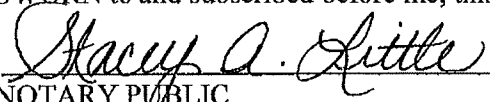
Done in Mobile, Alabama on this 24th day of July, 2019.



Lisa D. Jones
Executive Director
Alabama Historical Commission

NOTARY PUBLIC

SWORN to and subscribed before me, this the 24th day of July, 2019.



NOTARY PUBLIC

My commission expires on May 13th 2020

INSTRUCTIONS FOR U.S. MARSHAL:

PLEASE WITHHOLD IN REM SERVICE AT THIS TIME